



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 11-02156
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

04/25/2012

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on September 20, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on October 6, 2011, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR and answered it on October 31, 2011. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on January 4, 2012. I received the case assignment on January 9, 2012. DOHA issued a Notice of Hearing on February 22, 2012, and I convened the hearing as scheduled on March 7, 2012. The Government offered exhibits marked as GE 1 through GE 6, which were received and admitted into evidence without objection. Applicant testified. She submitted one exhibit marked as AE A, which was received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 15, 2012. I held the record open until March 28, 2012, for Applicant to submit additional matters. Applicant timely submitted AE B and AE C, which were received and admitted into evidence without objection. The record closed on March 28, 2012.

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice less than 15 days before the hearing. I advised Applicant of her right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived her right to the 15-day notice. (Tr. 9.)

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.d and 1.e of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶¶ 1.a - 1.c of the SOR.¹ She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 55 years old, applied for a position as an investigator with a Department of Defense contractor. Applicant is currently employed as a police officer, a job she has held for 34 years with the same police department. During these years, she has worked with sensitive information without incident. The current Chief of Police, the current City Manager, and a former Chief of Police wrote letters of recommendation on behalf of Applicant. All have worked with her in the police department and have known

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

her for many years. They describe her as a competent and conscientious police investigator, who managed complex and difficult cases. She protected sensitive and confidential law enforcement information. She is hard working, ethical, professional and honest. All trust her and are aware of her financial problems. They note that her financial problems have been ongoing for several years and that she has never compromised her integrity because of her financial problems. Her financial problems have not impacted her job with the police department.²

Applicant graduated from college with a Bachelor of Arts degree in December 2011. She also holds two Associate of Arts degrees. Applicant lives with her partner. They have two children, a daughter, who is 26 years old and lives independently, and a son, who is 15 years old and lives with them. Applicant's daughter has ongoing medical problems and continues to attend college. Applicant does help pay some of her daughter's medical bills because she does not have insurance.³

In 1997, Applicant became gravely ill. Doctors diagnosed her with a syndrome, which attacked her immune system, initially leaving her completely paralyzed, except for her eyes. She spent weeks in intensive care and three and one-half months in the hospital. She did not work for 10 months. During this time, she used all her leave, exhausted her savings account, and depleted a retirement account in order to pay her living expenses. Her medical bills totaled almost one million dollars, her insurance did not cover all her bills.⁴

Applicant continues to suffers residual medical problems because her immune system is compromised. She repeatedly developed sinus infections, which resulted in surgery. She suffers from glaucoma, which has resulted in several eye surgeries and medical procedures. Applicant stated that her eye had more "hardware than the bionic woman." Her medical procedures created numerous additional bills for Applicant, which she paid. The residual problems from her syndrome continue to cause medical problems, which require treatment. The result is ongoing medical bills.⁵

Applicant's financial problems started with her illness and her daughter's hospitalization in 2005. Her bills became unmanageable in 2005. By this time, the medical bills of Applicant and her daughter absorbed much of her disposable income. Her partner attended school full time, and Applicant provided the only income for the household. Applicant's income did not pay all the household expenses, her medical bills, and her debts, causing Applicant to miss payments on a number of debts. Her financial problems caused her to get behind in her mortgage payments in 2005. Her brother helped her financially, so that she did not lose her house in foreclosure. For a

²GE 1; GE 2; Tr. 19-20, 29-30.

³GE 1; Tr. 31-32.

⁴Response to SOR; GE 3; Tr. 20-21, 45.

⁵GE 3; Tr. 21-23.

period of time in 2005 and 2006, Applicant held a second job to help pay her expenses, but her job ended when the business closed.⁶

Applicant earns \$5,262 in monthly gross income and her net monthly income is \$2,893, unless she earns overtime. In February 2012, she earned an additional \$132 in net income from overtime work. Appellant occasionally works off-duty security jobs, which supplements her income. The income from this work varies each month. Applicant's monthly expenses average \$2,900 and include one school loan. Her second school loan is deferred for at least six months. She expects to pay her credit union loan within two months, which will provide additional income to pay her second school loan. She recently accepted a part-time position to verify site locations for Medicaid and Medicare. She expects to earn an additional \$100 to \$200 a month. She has sufficient income to cover her customary monthly expenses.⁷

The SOR identified five purportedly continuing delinquencies as reflected by credit reports from 2010 and 2011, totaling approximately \$28,652. The original creditors transferred, reassigned, or sold to other creditors or collection agents. One debt is now held by the original creditor. Applicant denied the \$1,872 debt identified in SOR ¶ 1.a because the identified creditor is not the party with whom she had an account. Applicant also denied the debts in SOR ¶¶ 1.b (\$7,095) and 1.c (\$4,407) for the same reasons. She agreed that she owed money to the original creditors on these accounts. The record does not contain any evidence which indicates that 1.b and 1.c are the same account. Applicant admitted owing the debts in SOR ¶¶ 1.d (\$2,106) and 1.e (\$13,172). She has not paid any of these debts, which became past-due at least six years ago.⁸

Applicant attempted to develop a payment plan with the credit companies. When the calls turned threatening, she contacted Consumer Credit Counseling. With the guidance of this company, she sent notices to collection agents to cease calling her, indicating that she would only talk with the original creditor and that all communication was to be in writing. Beginning in 2007, Applicant made offers to settle several of her past-due debts. The October 15, 2010 credit report reflects that Applicant paid three collection accounts because of these efforts. She made a settlement offer on several occasions to the original creditor or its collection agents for the debt in SOR ¶ 1.d, but her offer was not accepted. The creditor or its collection agents also made several offers to resolve the debt. These offers requested her to pay several hundred dollars a month, which she could not pay. She made periodic payments of the debt in SOR ¶ 1.e in the past, but has not made any recent payments.⁹

⁶GE 3; Tr. 22-23, 42-43.

⁷GE 2; AE C; Tr. 32-37, 47.

⁸Response to SOR; GE 3 - GE 6.

⁹GE 3; GE 6; Tr. 25-29.

Applicant continued periodic contacts with the credit counselor. Each year, after she received her substantial tax refund, Applicant paid her car insurance and other accumulated bills, including medical bills, with her refund. She also reserved some money to make a settlement offer on one of her unpaid accounts. The amount she decided to offer was recommended to her by her credit counselor. On her behalf, he called these creditors and made an offer, which was rejected. She did not provide documentation on these efforts as her credit counselor no longer works at the company, and she did not sign a contract.¹⁰

On June 15, 2009, the creditor in SOR allegation 1.b filed a civil action against Applicant to collect the debt. The creditor alleged in the lawsuit that it was the assignee, owner, and beneficiary of all the rights of the prior owner of the credit card debt, which was a debt buyer, not the original owner of the debt. Applicant filed an answer with the court on September 9, 2009. Under state law and the Federal Fair Debt Collections Practices Act, Applicant informed the court the creditor was a debt buyer and not the original owner of the debt, making the creditor a tertiary under state law. Applicant denied contracting with the creditor and asked the court to compel the creditor to reveal its trust cost or payment for the debt. Applicant also demanded strict proof of the debt through the presentation of original documents. This case languished in the court for over two years. On October 5, 2011, the creditor, through counsel, filed a Notice of Nonsuit as to all causes of action against Applicant. The court dismissed this suit without prejudice on October 12, 2011. At the hearing, Applicant stated that after she again requested the original contract and documents, the creditor filed the nonsuit notice, and the case was dismissed. The original documents requested were never produced by the creditor.¹¹

Applicant was forthright and credible in her testimony. She acknowledged owing money to the original creditors for the SOR debts and credibly discussed her efforts to resolve her debts, particularly in the past. Her medical problems began in 1997, continue until the present, and will continue into the future. She has exercised good judgment as a police officer and in her decisions about how to manage her limited resources. Her current Chief and her former Chief consider her trustworthy based on her work ethic and demonstrated character as a police officer. Applicant plans to retire as a police officer in February 2012 and anticipates that her retirement income will be similar to her current income, if not slightly higher.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

¹⁰GE 3; AE B; Tr. 23-29, 40-44, 47.

¹¹GE 3; AE A; Tr. 15-19.

disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.¹²

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

¹²Fact finding and credibility determinations are reserved exclusively for the administrative judge who is in a position to observe the demeanor of the witnesses. See *See v. Washington Metro. Area Transit Auth.*, 36 F.3d at 375, 382 (4th Cir. 1994). The Appeal Board has noted that it does not make "de novo findings of fact." ISCR Case No. 08-06058 at 3 n.1 (App. Bd. Sept. 21, 2009). Appeal Boards and federal courts review the administrative judges' factual determinations to ensure they are supported by substantial evidence in the record. See, 36 F.3d at 382; *Dehue Coal Company v. Ballard*, 65 F.3d 1189, 1193-1194 (4th Cir. 1995). Review authorities defer to the administrative judges' credibility determinations and inferences from the evidence. *Id.* The federal courts review Appeal Board decisions without giving deference to the factual findings of the Appeal Board. See, 36 F.3d at 380 (citations omitted). The Appeal Board cannot "substitute its own fact findings and judgment for" those of the administrative judge. *Id.* at 382. In 2005, the Second Circuit cogently articulated how appellate authorities resolve errors Immigration Judges make at the hearing level. In *Lin v. DoJ*, 428 F.3d 391, 395 (2nd Cir. 2005), the court explained that in the resolution of error, an appellate authority is required to:

- (1) defer to the IJ's fact-finding and affirm [the hearing judge's decision] when the fact-finding is based on specific and cogent reasons not infected by legal error;
- (2) remand where identified errors leave [the appellate authority] in doubt whether the IJ would have reached the same result absent the errors;
- (3) affirm, despite IJ errors, when the [appellate authority] can confidently predict that the IJ would necessarily reach the same result absent errors; and
- (4) grant the [appeal of the hearing judge's decision] only in those extremely rare instances where substantial evidence does not exist to support the IJ's decision.

Judge White's dissenting opinion explains why credibility determinations and ultimately the decision whether to grant or deny a clearance should be left to the judge who makes such determinations. See ISCR Case No. 05-01820 at 5-7 (App. Bd. Dec. 14, 2006). See also ISCR Case No. 04-06386 at 10-11 (App. Bd. Aug. 25, 2006) (Harvey, J., dissenting) (discussing limitations on Appeal Board's authority to reverse hearing-level judicial decisions and recommending remand as a remedy to resolve material, prejudicial error). See also *FCC v. Allentown*, 349 U.S. 358, 364 (1955).

or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

Appellant developed significant financial problems following a severe illness and continuing residual medical problems, which created significant medical expenses for her. She was unable to pay all her bills. Most of the debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f),¹³ and the following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

¹³In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has "... established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant's financial problems arose as a result of her serious illness, a factor beyond her control. Once she returned to work in 1998, she paid her bills for a number of years. She worked overtime or off-duty security jobs to help pay her bills. However, her ongoing medical problems stemming from her illness continued to impact her ability to work additional time and caused unanticipated medical bills, factors beyond her control. By 2005, her medical problems required surgery or medical procedures, which increased her medical expenses and limited her ability to work beyond her regular work hours. At this time, she provided the only income to her household, making it difficult to pay living expense, medical bills, and credit bills. She chose to pay her living expenses and medical bills, and not her credit card debts as she knew she needed continuing medical treatment and medication. In 2006, she worked a second job, which helped her pay some of her bills. The company ceased doing business, and she lost this income. She recently accepted a part-time position, hoping to earn some additional income each month. AG ¶ 20(b) partially applies because Applicant's financial problems are directly related to her medical condition and related problems. While she made strong efforts in 2007 and 2008 to resolve her debts, her recent efforts are limited.

When her financial problems first began, Applicant made a concerted effort to settle her past-due accounts with her creditors. She tried to work out payment plans or a resolution of her debts with her creditors. Several creditors accepted her settlement offers on her past-due debts and other creditors refused or did not accept her settlement offers. Collection creditors began harassing her to pay her bills. She notified these companies in writing that she would talk only with the original creditor and requested all communications to be in writing. For awhile she received some written communications from one or two creditors, but she has not received any communication with them for several years. She developed an ongoing relationship with a credit counselor, who guided her more recent limited attempts to settle some of her past-due debts. After she received her tax refund, she met with her financial counselor, who made a verbal settlement offer to one of her creditors, which was rejected. With her current expenses and future school loan repayment, she lacks the ability to assume one more monthly payment. She lives within her monthly income and works sufficient extra time during the year to pay her bills. AG ¶¶ 20(c) and 20(d) are partially applicable.

Applicant pays her current living expenses and bills. Since 2005, she has not incurred unpaid credit card debt. Her partner works and helps contribute to the household expenses, which relieves some of Applicant's financial responsibility. Applicant's debts occurred in 2005 when a confluence of events occurred and are not the result of poor judgment or irresponsibility; rather her debts can be directly related to her residual medical problems created by her syndrome, which compromised her immune system. Her income is stable and will not decline when she retires, which limits the likelihood that she will incur substantial unpaid debts in the future. AG ¶ 20(a) is partially applicable.¹⁴

¹⁴Two recent Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010), the Applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. She filed for bankruptcy the same month the

Applicant disputed the debts listed in SOR ¶¶ 1.a through 1.e when she wrote letters to the collection creditors, indicating that she would only communicate with the original creditor. She also requested that all future communications be in writing. When the creditor in SOR ¶ 1.b filed a lawsuit, she responded, disputing that she had a contract with this creditor. She asked for documented proof of her contract with the creditor and did not receive this information. Because she did not recognize these collection companies, she had a reasonable basis for her dispute with them. She provided documentation which reflected her actions. This mitigating condition is partially applicable to the creditors listed in SOR ¶¶ 1.a through 1.c. Applicant does not dispute owing money to the original creditor, but she does dispute owing money to the collection companies, who are not known to her.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

Administrative Judge issued her decision. *Id.* at 1-2. The Applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support. The Appeal Board determined that AG ¶ 20(a) was "clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual's current reliability, trustworthiness, or good judgment)" even though that Applicant's debts were unresolved at the time the Administrative Judge's decision was issued. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an Applicant, who had been sporadically unemployed and lacked the ability to pay his creditors, noting that "it will be a long time at best before he has paid" all of his creditors. The Applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The Applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took "reasonable actions to effectuate that plan." *Id.* The Appeal Board remanded the Administrative Judge's decision because it did not "articulate a satisfactory explanation for his conclusions," emphasizing the Administrative Judge did "not explain[] what he believes that Applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by Applicant was not "responsible" in light of his limited circumstances." *Id.*

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.¹⁵

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's past-due debts occurred more than five years ago; however, the debts were never reduced to a judgment (the only debt action filed was nonsuited) and the Statute of Limitations has expired, making them legally uncollectible.¹⁶ (See AG ¶ 2(a)(8).) Since 2005, when her medical treatments and resulting medical bills overwhelmed her

¹⁵In its December 28, 2011 decision in ISCR CASE No. 10-04405, the Appeal Board provided guidance for administrative judges when doing a "whole-person" analysis. The Appeal Board stated:

. . . A whole-person analysis entails an examination of the entirety of the record evidence in relation to the security concerns raised in a SOR. See, e.g., ISCR Case No. 02-28891 at 4 (App. Bd. Apr. 22, 2004). Although the Directive lists certain factors which are normally associated with a whole-person analysis, these are not exhaustive. See, e.g., ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007). A Judge may conclude, as a result of his whole-person analysis, that an applicant is a person of good character. However, that analysis requires the Judge to proceed with the question of whether there is a nexus between an applicant's evidence of good character and the applicant's claim that he has mitigated the security concerns in his case. See, e.g., ISCR Case No. 04-00109 at 4-5 (App. Bd. Jul. 13, 2006). In a Guideline F case, a whole-person analysis would require a Judge to consider whether an applicant's mitigation evidence bears a rational connection to a conclusion that the applicant would resist those pressures that are a reasonably foreseeable from his financial delinquencies. See *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) Viewed in this way, a favorable whole-person analysis would mean that the Judge has found such a nexus and that applicant should be cleared.

¹⁶The Appeal Board has held that the debts which are uncollectible under the State Statute of Limitations do not reflect a good-faith resolution of debts under AG ¶ 20(d).

financial capability, Applicant has managed her monthly income and expenses. Her medical expenses will always absorb her discretionary income. She still has little income to assume monthly payments on her past-due debts, but once a year she makes an offer to settle one of her past-due debts, without success. After she retires next year, she plans on working at least 20 hours a week. Such employment will provide income above her retirement benefit, which will be about the same as her current income.

For the last 34 years, she has worked as a police officer. During these years, she has worked on a variety of criminal cases, at times managing some very complex criminal cases. Her superiors, who have known her for many years, described her as hard working, ethical, professional, honest, and trustworthy. She protected sensitive and confidential law enforcement information. Their recommendations reflect that Applicant is a person of good character. Her financial problems have been ongoing for several years. She never compromised her integrity as a police officer because of her financial problems or in an effort to resolve her debts. While some of her debts from 2005 still linger, Applicant would resist any pressures which are reasonably foreseeable because she has delinquent debt. I base this finding on her forthright and honest testimony and the strong recommendations from those who have known her as a hardworking, honest and trustworthy police officer. She has demonstrated through the performance of her duties as a law enforcement officer for many years that she has the good judgment, integrity, and reliability required of those who have access to classified information. Thus, her debts cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. While her debts remain unpaid, under the facts of this case, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1)).

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her finances under Guideline F.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a-1.e:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge